Kesatuan Kebangsaan Pekerja-Pekerja Bank (NUBE) v Ketua Pengarah Kesatuan Sekerja (DGTU) & Ors

HIGH COURT (KUALA LUMPUR) — JUDICIAL REVIEW NO R1–25–193 OF 2005
RAUS SHARIF J
11 MAY 2006

Administrative Law — Remedies — Declaration — Mandamus — Whether first respondent in registering third respondent had properly exercised his discretion under s 12(2) of the Trade Union Act 1959 — Whether first respondent acted contrary to the Trade Union Act 1959 in registering third respondent of which scope of its membership was at the material time the same as the applicant with regards to employees of second respondent — Whether first respondent had acted in breach of natural justice when he failed to afford the applicant an opportunity of being heard — Whether an order of mandamus directing the first respondent to take steps to deregister the third respondent under s 15 of the Act should be made —

On 13 December 2004, the first respondent in pursuant to s 12(1) of the Trade Union Act 1959 ('the Act') registered the Kesatuan Pekerja-Pekerja AmFinance Berhad ('the third respondent') as an in-house union of AmFinance Bhd. About two weeks after its registration, AmFinance Bhd granted recognition to the third respondent. On 1 June 2005, by a court order, AmFinance Bhd took over all the assets, liabilities, rights and obligations of the business of AmBank Bhd and changed its name to AmBank (M) Berhad ('the second respondent'). This was an application by the National Union of Bank Employee ('the applicant') for judicial review seeking, inter alia, a declaration that the Director General of Trade Union ('the first respondent') had acted contrary to the Act, specifically ss 12(2) and 12(3), in registering the third respondent of which scope of its membership was at the material time the same as the applicant with regards to the employees of the second respondent and an order of mandamus directing the first respondent to take steps to deregister the third respondent under s 15 of the Act.

Held, dismissing the application:

The impediment to register a trade union under s 12(2) of the Act would only arise if there is another union representing the employees in a particular establishment, trade, occupation or industry. At the time when the third respondent was registered by the first respondent, there was no other union representing the employees of AmFinance Bhd. Thus, the issue of multiplicity of unions within the particular establishment, trade, occupation or industry did not arise. Similarly, the issue that the applicant was not afforded the right to be heard did not arise: *Association of Bank Officer, Peninsular Malaysia v Ketua Pengarah Kesatuan Semenanjung Malaysia & Anor* [2004] 7 MLJ 109 distinguished. The first respondent was not in breach of s 12(1) of the Act (see para 6).

[Bahasa Malaysia summary

On 13 Disember 2004, responden pertama menurut s 12(1) Akta Kesatuan Sekerja 1959 ('Akta tersebut') telah mendaftarkan Kesatuan Pekerja-Pekerja AmFinance Berhad ('responden ketiga') sebagai persatuan dalaman AmFinance Bhd. Selepas dua minggu pendaftaran AmFinance Bhd telah mengiktiraf responden ketiga. Pada 1 Jun 2005, melalui satu perintah mahkamah, AmFinance Bhd mengambilalih semua aset, liabiliti, hak dan obligasi perniagaan AmFinance Bhd dan menukar namanya kepada AmBank (M) Berhad (responden kedua'). Ini adalah satu permohonan oleh Kesatuan Kebangsaan Pekerja-Pekerja Bank ('pemohon') untuk semakan semula memohon, antara lain, satu deklarasi bahawa Ketua Pengarah Kesatuan Sekerja ('responden pertama') telah bertindak bertentangan dengan Akta tersebut, khususnya ss 12(2) dan 12(3), kerana mendaftarkan responden ketiga

Diputuskan, menolak permohonan tersebut:

Sekatan untuk mendaftar kesatuan sekerja di bawah s 12(2) Akta tersebut hanya akan timbul jika kesatuan sekerja lain mewakili pekerja dalam suatu penubuhan, perniagaan, pekerjaan atau industri tertentu. Pada masa responden ketiga didaftarkan oleh responden pertama, tiada kesatuan lain yang mewakili pekerja AmFinance Bhd. Oleh itu, persoalan kepelbagaian kesatuan dalam penubuhan, perniagaan, pekerjaan atau industri tidak timbul. Sama juga, persoalan bahawa pemohon tidak diberikan hak untuk didengar tidak timbul: *Association of Bank Officer, Peninsular Malaysia v Ketua Pengarah Kesatuan Semenanjung Malaysia & Anor* [2004] 7 MLJ 109 dibeza. Responden pertama tidak melanggar s 12(1) Akta tersebut (lihat perenggan 6).]

Notes

For cases on declaration, remedies under administrative law, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 500–571.

Cases referred to

Association of Bank Officer, Peninsular Malaysia v Ketua Pengarah Kesatuan Semenanjung Malaysia & Anor [2004] 7 MLJ 109 (distd)

Legislation referred to

Trade Union Act 1959 ss 12(1), (2), (3), 15

R Sivarasa (Daim & Gamany) for the applicant.
Narkunavathy Sundareson (Senior Federal Counsel) (Asma Ibrahim with her) (Federal Counsel, Attorney Generals Chambers) for the first respodent.
S Rutheran (Sivagnanam & Associates) for the second respondent.
D Krishna (K Indran with him) (Indran Guru & Co) for the third respondent.

Raus Sharif J:

[1] This is an application by the National Union of Bank Employee ('applicant') for judicial review seeking, inter alia, the following remedies:

(a) a declaration that the Director General of Trade Union ('the first respondent') has acted contrary to the Trade Union Act 1959 ('the Act') specifically s 12(2) and 12(3) of the Act, in registering Kesatuan Pekerja-Pekerja AmFinance Berhad ('the third respondent') of which scope of its membership was at the material time the same as the applicant with regards to the employees of AmBank (M) Berhad ('the second respondent'); and

(b) an order of mandamus directing the first respondent to take steps to deregister the third respondent under s 15 of the Act.

[2] The relevant facts leading to applicant's application are these. On 13 December 2004, the first respondent in pursuant to s 12(1) of the Act registered the third respondent as a in-house union of AmFinance Bhd. About two weeks after its registration, AmFinance Bhd granted recognition to the third respondent. What happened next was that on 1 June 2005, by a court order, AmFinance Berhad took over all the assets, liabilities, rights and obligations of the business of AmBank Berhad and changed its name to AmBank (M) Berhad, ie the second respondent.

[3] Before me, it is the contention of En R Sivarasa, representing the applicant, that with the merger of AmBank Berhad and AmFinance Bhd (which is currently known as AmBank (M) Berhad), the third respondent should be deregistered as a union, as its continued existence is contrary to the policy in s 12(2) of the Act which discourages multiplicity of unions within the same industry, trade, establishment or occupation. According to En. R Sivarasa, the third respondent's scope of representation in the second respondent overlaps with that of the applicant.

[4] Thus, the issue before me is whether or not the first respondent in registering the third respondent had properly exercised his discretion under s 12(2) of the Act. Section 12(2) of the Act provides as follows:

> The Director General may refuse to register a trade union in respect of a particular establishment, trade, occupation or industry, if he is satisfied that there is in existence a trade union representing the workmen in that particular establishment, trade, occupation or industry and it is not in the interest of the workmen concerned that there be another trade union in respect thereof.

[5] Senior Federal Counsel, Puan Narkunavathy, representing the first respondent, submitted that, since at the time of the registration of the third respondent there was no other union representing the employees in AmFinance Berhad, there was no impediment for the registration of the third respondent by the first respondent. En S Rutheran and En D Krishna whom representing the second and third respondents respectively, were of the same views.

[6] I am in agreement with the respondents. To me, the impediment to register a trade union under s 12(2) would only arise if there is another union representing the employees in an a particular establishment, trade, occupation or industry. Clearly, in this instance, at the time when the third respondent was registered by the first respondent, there was no other union representing the employees of AmFinance

Berhad. Thus, the issue of multiplicity of unions within the particular establishment, trade, occupation or industry does not arise.

[7] Another main issue raised by En. R Sivarasa was that the first respondent had acted in breach of natural justice when he failed to afford the applicant an opportunity of being heard. In advancing this argument En. R Sivarasa, referred to my judgment in *Association of Bank Officer, Peninsular Malaysia v Ketua Pengarah Kesatuan Semenanjung Malaysia & Anor* [2004] 7 MLJ 109 (ABOM's case) where I decided that an affected parties must be afforded an opportunity to be heard before the registration of another union.

[8] With respect, the principle in ABOM's case is not applicable in the instant case. The facts are distinguishable. In ABOM's case, when the union called Keppak Bumiputra was registered there were already two existing unions in Bumiputra Commerce Malaysia (BCB) namely, Kesatuan Eksekutif Bumiputra Commerce Bank Bhd ('BOCESU'), a in-house union, and Persatuan Pegawai Bank Semenanjung Malaysia ('ABOM') a national union. The Director General of Trade Union (DGTU) being aware of the existence of the two unions failed to consult them and afforded them the right to be heard before registering Keppak Bumiputra. For the said reasons I hold that the DGTU was wrong in not consulting and affording BOSCESU and ABOM the right to be heard.

[9] In the instant case, when the third respondent was registered, there was no other union representing the employees of AmFinance Bhd. Hence, the issue that the applicant was not afforded the right to be heard does not arise.

[10] In conclusion, I am of the view that the first respondent was not in breach of s 12(1) of the Act. Accordingly the applicant's application is hereby dismissed with costs.

Application dismissed.

Reported by Peter Ling